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| <b>B.C., Appellant</b>                  | ) |                              |
|   | ) |                              |
| <b>and</b>                              | ) | <b>Docket No. 20-0566</b>    |
|   | ) | <b>Issued: March 8, 2022</b> |
| <b>DEPARTMENT OF THE NAVY,</b>          | ) |                              |
| <b>UNITED STATES NAVAL SHIP COMET,</b>  | ) |                              |
| <b>FPO, San Francisco, CA, Employer</b> | ) |                              |
|   | ) |                              |

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 13, 2020 appellant filed a timely appeal from a November 22, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

The issue is whether OWCP properly denied appellant's request for authorization of home equipment and modifications.

<sup>2</sup> The Board notes that, following the issuance of the November 22, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On January 6, 1968 appellant, then a 27-year-old seaman, filed a notice of injury or occupational disease claim (Form CA-1) alleging that on January 5, 1968 he sustained a broken left arm and a fractured left patella as a result of a motorcycle accident in Vietnam while in the performance of duty. OWCP accepted the claim for skull fracture with convulsive disorder, left wrist fracture, left patella open fracture, left bicep laceration, right hip fracture, and traumatic right hip osteoarthritis.<sup>3</sup> The record reflects that OWCP paid appellant wage-loss compensation on the periodic rolls as of June 16, 2002. On August 8, 2013 appellant underwent OWCP-authorized total right hip replacement surgery.

In an August 8, 2019 letter, appellant requested that OWCP grant authorization for a handicap bathroom extension, a new chair lift with a table, a ramp to access the rear of his property, widen internal doors, and level and resurface areas around his house to facilitate his use of a wheelchair, as recommended by his occupational therapist in an accompanying June 6, 2019 medical report.

Appellant also submitted an undated quote and quotes dated January 13, 18, June 16, and August 8, 2019 for the recommended home modifications.

In an August 14, 2019 development letter, OWCP advised appellant that it required periodic medical reports in cases in which compensation was being paid for prolonged disability. It requested that he submit an opinion from his physician regarding the status of his accepted condition, his ability to return to work, and his current medical treatment plan. OWCP afforded appellant 30 days to respond.

A memorandum of telephone call (Form CA-110) dated September 4, 2019 reflects that OWCP requested that appellant submit a report from his treating physician explaining the necessity of an outdoor wheelchair ramp since he was not currently using a wheelchair.

OWCP received medical evidence from Dr. Aidan F. Lynch, an attending orthopedic surgeon. In an August 27, 2019 attending physician's report (Form CA-20), Dr. Lynch noted appellant's accepted conditions. He advised that appellant sustained multiple injuries and stiff lower limbs that were caused or aggravated by the January 5, 1968 employment injury. Dr. Lynch indicated that appellant was totally disabled from work as of May 1, 1986 and that he was becoming increasingly disabled.

In a September 4, 2019 narrative report, Dr. Lynch noted appellant's history of injury on January 5, 1968. He also noted his current complaints of persistent shoulder discomfort. Dr. Lynch observed that appellant's ability to remain active was gradually deteriorating, he walked with a shuffling gait and used a stick to mobilize, and his ability to walk was becoming more restricted especially on rough ground or when attempting to climb steps or stairs. He further observed that appellant was physically unable to work and he had to drive an automatic car. Dr. Lynch reported findings on physical examination. He indicated that in 2013 appellant

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<sup>3</sup> By decision dated January 14, 1972, OWCP granted appellant a schedule award for 10 percent permanent impairment of the left arm, 55 percent permanent impairment of the left leg, and 12 percent permanent impairment of the right leg.

underwent total right hip replacement surgery to convert a fused hip to a hip arthroplasty. Dr. Lynch indicated that the operation provided him with improved hip mobility, but he still had a significant degree of stiffness in his hip in view of his previous arthrodesis. He advised that no further improvement was anticipated regarding appellant's hip function. Additionally, Dr. Lynch advised that appellant had arthrodesis to his left knee, which was in a fixed position, discomfort in his back, which appeared to be associated with stiffness in both his right hip and left knee, and restricted movement of both shoulders. He related that, in light of appellant's injury, he was becoming increasingly disabled in his ability to remain active. Dr. Lynch was also no longer able to climb steps or stairs. He determined that appellant was 100 percent permanently disabled from work. Dr. Lynch related that appellant was also becoming increasingly disabled from performing activities of daily living (ADLs). He advised that his house required indoor modifications to provide access to his bedroom and toilet. Dr. Lynch further advised that outdoor modifications, which included a ramp to gain entrance into his house were required as appellant had to avoid using steps or stairs and likely required a wheelchair in the future.

Dr. Lynch, in an October 1, 2019 addendum letter, advised that appellant had restricted mobility as a result of his multiple injuries, which required indoor and outdoor modifications to his house. He requested that OWCP grant authorization for such modifications. Dr. Lynch noted that the ground at appellant's house was quite rough and he was unable to walk on uneven surfaces. As such, he maintained that a solid surface, either concrete or tarmac, was required. Dr. Lynch also maintained that ramps instead of steps would be required at the entrance to appellant's house. He indicated that the front door and indoors of the house needed to be widened to allow wheelchair access in the future. Dr. Lynch again opined that appellant remained permanently totally disabled from work.

OWCP received additional estimates for a handicap bathroom and other home modifications, including a wheelchair ramp with a platform and widened front and rear doorways.

By decision dated October 11, 2019, OWCP granted authorization for modification of appellant's existing bathroom and other indoor home modifications.

In an October 25, 2019 decision, OWCP denied authorization for a wheelchair ramp and other outdoor home modifications, finding that the medical evidence of record was insufficient to establish that the requested equipment and modifications were medically necessary to address the effects of the January 5, 1968 employment injury.

By decision dated November 22, 2019, OWCP reissued the October 25, 2019 decision.

### **LEGAL PRECEDENT**

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree, or the period of disability, or aid in lessening the amount of monthly compensation.<sup>4</sup> While OWCP is obligated to pay for treatment of employment-related conditions, the employee

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<sup>4</sup> 5 U.S.C. § 8103; *see R.P.*, Docket No. 17-0428 (issued April 19, 2018); *Thomas W. Stevens*, 50 ECAB 288 (1999).

has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.<sup>5</sup>

In interpreting section 8103, the Board has recognized that OWCP has broad discretion in approving services, with the only limitation on OWCP's authority being that of reasonableness.<sup>6</sup>

Abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>7</sup>

The Board has previously noted that OWCP's procedures provide for housing modifications under limited circumstances.<sup>8</sup> To be eligible for housing modifications, the claimant must be severely restricted in terms of mobility, functionality, and independence in normal living functions, on a permanent basis, due to the work-related injury. Examples are impairments that require the use of a prosthesis, wheelchair, motorized scooter, leg braces, crutches, cane, or other self-help devices. Such medical conditions include quadriplegia, paraplegia, amputation, total loss of use of limbs, blindness, and profound deafness bilaterally.<sup>9</sup>

Before considering the technicalities of housing modification proposals, a determination must be made on the medical necessity of the requested modification. There are several aspects to consider when reviewing the evidence of record:

“(1) Does the level of impairment rise to the level delineated in the eligibility section above?

“(2) Does the medical evidence support that the claimant has restrictions or physical limitations which necessitate the modification?

“(3) Are these restrictions caused by the accepted work-related condition?

“(4) Does the physician provide detailed findings and rationale for the opinion that the claimant's work injury has caused restrictions which necessitate the requested

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<sup>5</sup> See *R.P., id.*; *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004); *Zane H. Cassell*, 32 ECAB 1537 (1981).

<sup>6</sup> See *B.I.*, Docket No. 18-0988 (issued March 13, 2020); see also *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

<sup>7</sup> *D.S.*, Docket No. 18-0353 (issued May 18, 2020); *P.L.*, Docket No. 18-0260 (issued April 14, 2020); *L.W.*, 59 ECAB 471 (2008).

<sup>8</sup> *R.K.*, Docket No. 14-1238 (issued September 23, 2014).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Housing and Vehicle Modifications*, Chapter 2.1800.3 (October 2009).

modification? This should come from a physician who is a recognized authority in the appropriate medical specialty.”<sup>10</sup>

### ANALYSIS

The Board finds that OWCP properly appellant’s request for authorization of home equipment and modifications.

OWCP accepted that on January 5, 1968 appellant sustained a work-related skull fracture with convulsive disorder, left wrist fracture, left patella open fracture, left bicep laceration, right hip fracture, and traumatic right hip osteoarthritis. Consequently, it granted authorization for appellant’s handicap bathroom and other indoor home modifications, but denied authorization for a wheelchair ramp and other outdoor home modifications.

In a September 4, 2019 report and October 1, 2019 addendum letter, Dr. Lynch requested that OWCP authorize modification to the outside of appellant’s existing home, noting that he would benefit from handicap accessible equipment. He noted that appellant’s current and worsening ability to walk was restricted especially when he walked on rough or uneven ground and attempted to climb steps or stairs. Dr. Lynch also noted that he had increasing difficulty performing ADLs. He maintained that appellant would “likely” needed a wheelchair ramp to enter his house because he should avoid using steps or stairs. As such, Dr. Lynch also related that the front door and indoors of appellant’s house required widening to allow for the use of a wheelchair in the future. Additionally, he indicated that a solid surface, such as concrete or tarmac, was required outside appellant’s house due to his inability to walk on uneven surfaces. Dr. Lynch found that appellant’s permanent total disability from work resulted from the January 5, 1968 employment injury, which required total right hip replacement surgery in 2013.

To establish the medical necessity of the requested modification, Dr. Lynch was required to explain how appellant’s present inability to negotiate steps, requiring a wheelchair ramp, and to walk on uneven ground, requiring a solid surface, were caused by the accepted employment injury that occurred 51 years prior. The Board finds that Dr. Lynch failed to provide a rationalized medical opinion explaining why the requested the wheelchair ramp and other home modifications were medically necessary.<sup>11</sup> Dr. Lynch did not provide the necessary medical explanation as to how the wheelchair ramp and other outdoor home modifications would cure, reduce the period of disability, or aid in lessening the amount of monthly compensation.<sup>12</sup>

As noted, the only limitation on OWCP’s authority is approving or disapproving services under FECA is one of reasonableness.<sup>13</sup> As the medical evidence submitted provided insufficient

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<sup>10</sup> *Id.* at Chapter 2.1800.4.

<sup>11</sup> *Supra* note 4; *see also O.M.*, Docket No. 20-0640 (issued April 19, 2021); *D.K.*, Docket No. 20-0002 (issued August 25, 2020); *G.B.*, Docket No. 18-1444 (issued March 25, 2019); *M.B.*, Docket No. 17-1679 (issued February 8, 2018); *R.K.*, Docket No. 14-1238 (issued September 23, 2014) (medical conclusions unsupported by rationale are of diminished probative value).

<sup>12</sup> *Supra* note 3.

<sup>13</sup> *Supra* note 5.

explanation of medical necessity, the Board finds that OWCP properly denied appellant's requests under section 8103 of FECA.<sup>14</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for authorization of home equipment and modifications.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> *Supra* note 10.